IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.60 OF 2005

Neeta Gurudas Natekar. ..... Appellant.

V/s.

Vaishali Falari and others. ..... Respondents.

Mr. S. G. Dessai, Senior Advocate with Mr. Shivan Dessai, Advocate for the appellant.

Mr. Mr. V.P. Thali, Advocate for the respondentsNo.1.

Mr. S. S. Kantak, Advocate General with Miss Rakhi Chodankar, Addl. Government Advocate for the respondents No.4 to 8.

CORAM : D.D. SINHA, J.

DATE : 17TH NOVEMBER, 2005.

P.C.

Heard Mr. S. G. Dessai, the learned Senior Counsel for the appellant, Mr. V. P. Thali, the learned Counsel for the respondent No.1 and Mr. S. S. Kantak, the learned Advocate General for the respondents No. 4 to 8.

2. The appeal from order is directed against the order dated 11th November, 2005 passed by the IInd Additional District Judge, Panaji, whereby the application for interim relief moved by the

present appellant in Election Petition No.1/2005 came to be dismissed. Mr. Dessai, the learned Senior Counsel for the appellant contended that the learned Additional District Judge initially granted an ex parte injunction as prayed for. However, by the impugned order, the application for injunction came to be rejected. It is submitted that the election to the Mapusa Municipal Council was held on 23.10.2005. The results of the election were declared on 24.10.2005, wherein the respondent No.1 was declared elected as Councillor from the relevant Ward. It is contended that as per the scheme of Rule 43 of the Goa Municipalities (Chairperson and Vice-Chairperson Elections) Rules, 1969**,** the Presiding Officer shall, at the close of the poll, prepare a ballot paper account in Form XIII and enclose it in a separate cover with the words “Ballot Paper Account” subscribed thereon. The Presiding Officer has undertaken this exercise and filled in the Form No. XIII wherein it is mentioned that the total number of ballot papers in the ballot box were `1583'.

3. Mr. Dessai, the learned Senior Counsel further contended that Form No.XIV is also required to be filled in as per scheme of Rules 54 and 57 of the said Rules. Rule 54 contemplates that all the ballot papers, which are not rejected under Rule 53, shall be taken for counting and the votes recorded in favour of each candidate shall be counted with the aid of persons appointed to assist the Returning Officer under clause (a) of sub-Rule (1) of Rule 50. Sub-Rule (2) reads

thus :

> " Upon the completion of counting of votes in respect of a polling station, the Returning Officer shall make the entries in a result sheet in Form XIV and announce the particulars. "

4. Mr. Dessai, the learned Senior Counsel contended that Form XIV which was filled in by the Returning Officer and in the column of total votes polled mentioned that the total ballot papers in the ballot boxes were `1584', therefore, obviously, there is difference of one vote and since both these forms are required to be filled in by the Authorities, the Authorities may be asked to explain this aspect of the matter. It is contended that in the instant case, the appellant has lost the election by one vote to the respondent No.1 and if the total ballot papers described in the Form XIII are 1583, the same figure ought to have found place in Form XIV as well. However, since there is an increase of one ballot paper (one vote), the said increase is required to be justified by the Officers. In any case, the appellant had a good prima facie case to seek temporary injunction against the respondent No.1 as prayed for in the application for temporary injunction. It is contended that the learned Additional District Judge, without taking into consideration these vital issues, lost sight of the fact of prima facie nature of the issues and has given undue importance to the facts not relevant at this stage for the issues

in question and, therefore, rejected the application for temporary injunction. It is, therefore, contended that the order impugned, in the light of the above referred facts and circumstances, as well as in view of the scheme described under the relevant rules is unsustainable in law.

5. Mr. Dessai, the learned Senior Counsel alternatively contended that if this Court, for some reasons, is not inclined to show indulgence in the matter in hand, in that event, direction be given to the District Judge, Panaji to dispose of the election petition within a stipulated period.

6. Mr. Thali, the learned Counsel for the respondent No.1, on the other hand, contended that the learned Additional District Judge, after taking into consideration pros and cons as well as the relevant law applicable to the issues in question, passed the exhaustive order, giving sufficient reasons for rejecting the application for temporary injunction and, therefore, supports the impugned order.

7. I have considered the contentions canvassed by the learned Counsel for the appellant as well as the respondent No.1 and also perused the relevant records. In the instant case, it is not in dispute that the election to the Mapusa Municipal Council was held on 23.10.2005 and the results of the election were declared on

24.10.2005 and the respondent No.1 was declared elected as the Councillor to the Mapusa Municipal Council. It is no doubt true that the appellant has filed the election petition. However, in a democratic set up when a candidate is already declared elected, it is not possible to take away his rights as an Councillor till such time the matter is finally concluded on the basis of the evidence adduced by the parties and the issue is decided on merits. The learned Additional District Judge has taken into consideration all these aspects as well as the relevant rules applicable in this regard and, therefore, in my considered view, the order impugned is just and proper and is also sustainable in law.

8. In so far as the alternate prayer made by Mr. Dessai, the learned Senior Counsel is concerned, which is also not objected to by the Counsel for the other side, it will be appropriate in the interest of all the parties to the election petition, to direct the District Judge, Panaji to finally dispose of the Election Petition No.1/05 after following the regular procedure applicable in this regard, as early as possible and in no case beyond the period of six months from the date of receipt of the order.

With these observations and directions, the appeal from order is disposed of.

D.D. SINHA, J.

ssm.